

# Notice of Allowability

Application No.

09/103,262

Examiner

M. Franco Salvoza

Applicant(s)

BERMAN ET AL.

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 11/22/2004.
2. ☒ The allowed claim(s) is/are 19-20, 22, 27-40.
3. ☒ The drawings filed on 11/22/2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 11-22-04
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

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### **DETAILED ACTION**

1. The examiner of your application has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1648, Examiner Salvoza.

2. Applicant has canceled claims 21, 23 and 26, made amendments to claims 19, 20, 22, 27-30, and added new claims 31-40. Claims 19, 20, 22 and 27-40 are pending and under consideration.

3. Examiner acknowledges corrections made to the drawings, the request for a corrected filing receipt, the information disclosure statement, and the specification through the title and abstract.

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The address for the ATCC has recently changed, and the specification has been amended to reflect that. The new address is:

American Type Culture Collection

10801 University Boulevard

Manassas, VA 20110-2209

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The brief description of the drawings on page 6 of the specification has been amended to refer to each individual drawing for Figure 2, specifically. The description now reads,

"FIGURES 2A-1, 2A-2, 2A-3 show the amino acid sequences of the mature env glycoprotein gp120 from the IIIB isolate of HIV-1. Figure 2B shows the N-terminal sequence portion of the recombinant fusion glycoproteins (9AA or CL44) from the herpes simplex virus protein gD1."

At the end of the paragraph, the sentence has been amended to read, "The cysteine residues of gp120 are enclosed in a box..."

Authorization for the following examiner's amendments was given in a telephone interview with attorney of record Emily Haliday on Friday, May 13, 2005.

The application has been amended as follows:

Claim 30 has been amended because of the following informalities: there is a typographical error. The claim reads "a hybridoma selected from the group consisting of hybridomas with ATCC accession numbers CRL 10515, CRL 10514, *CRL and 10510*." The claim has been changed to: "A hybridoma selected from the group consisting of hybridomas with ATCC accession numbers CRL 10515, CRL 10514, and CRL 10510."

Claim has been amended because of the following informalities: there is no space between the word "antibodies" and the group number "10D8." The claim has been changed to: "A monoclonal antibody, selected from the group consisting of monoclonal antibodies 10D8, 10F6 and 11G5, produced by hybridomas with ATCC accession nos. CLR 10513, CLR 10512, and CLR 10511, respectively."

Claim 40 has been amended because of the following informalities: there is a typographical error. The claim reads "a hybridoma selected from the group consisting of

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hybridomas with ATCC accession numbers CRL 10513, CRL 10512, **CRL and 10511.**" The claim has been changed to: "A hybridoma selected from the group consisting of hybridomas with ATCC accession numbers CRL 10513, CRL 10512, and CRL 10511."

The following is an examiner's statement of reasons for allowance:

Claims 19, 20, 22 and 27-40 are allowed. Applicant has sufficiently traversed Examiner Foley's rejections under 35 U.S.C. 101, 112 2<sup>nd</sup> paragraph, 112 1<sup>st</sup> paragraph, 102(a), 102(b), and 103(a) by claim amendment.

The 35 U.S.C. 101 rejection of claim 19 was successfully traversed with the amendment of "isolated" or "purified" fragments.

The 35 U.S.C. 112, 2<sup>nd</sup> paragraph rejections for claims 19 and 29 were successfully traversed with the citation of characteristics specifying the antibody/fragment bound to a "gp120 epitope bound by monoclonal antibody 5B3, produced by a hybridoma with ATCC accession number 10515, wherein said antibody or fragment thereof blocks CD4/gp120 binding and reduces reverse transcriptase activity *in vitro*."

The 35 U.S.C. 112, 1<sup>st</sup> paragraph rejections are withdrawn based on the specific amendment limitations of claims 19 and 29 and the support in the specification on pp. 59-61. In addition, the 35 U.S.C. 112 1<sup>st</sup> paragraph enablement rejections of claims 19, 20, 22, and 27-30 are traversed by compliance with the deposit rules. The 35 U.S.C. 112, first paragraph rejection of Claim 20 for the typographical error for hybridoma 13H8 is withdrawn, as the replacement Statement Regarding Deposit of Biological Material is acknowledged.

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The art rejections based on 35 U.S.C. 102(a), 102(b), and 103 were successfully traversed based on the cancellation of claims 21 and 26 and amendments to claims 19-20, 22, 27-28, and 30.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Franco Salvoza whose telephone number is (571) 272-8410. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on (571) 272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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6/13/05